

REMARKS

I. Introduction

In response to the Office Action mailed on August 13, 2003, applicants submit the following remarks.

This is the third attempt by applicants to bring many of the remarks contained herein before the Examiner. On May 30, 2003, applicants filed a Request for Continued Examination ("RCE"), a Reply to Final Office Action, and a Fifth Supplemental Information Disclosure Statement (as evidenced by the postcard attached as "Exhibit A" and bearing a May 30, 2003 stamp by the OIPE) in response to the Office Action mailed on February 6, 2003. The Reply to Final Office Action was fully responsive to all of the issues raised by the Examiner in the February 6, 2003 Office Action.

In response to applicants' May 30, 2003 filing, the Examiner mailed an Office Action on August 13, 2003 that largely contained the same objections and rejections as the Final Office Action mailed on February 6, 2003. Pursuant to a telephone conference between Examiner Prebilic and the undersigned agent on August 22, 2003, applicants resubmitted the entire May 30, 2003 filing. Apparently, the Examiner only received the Request for Continued Examination with the original filing. This submission was made by hand delivery, as evidenced by the postcard attached as "Exhibit B," which was dated August

29, 2003, signed by the Examiner, and date stamped by Technology Center 3700 on September 2, 2003. Applicants understood that the Examiner would issue an action addressing the merits of the May 30, 2003 Reply. Because no action on the May 30, 2003 and August 29, 2003 filings has been received by applicants to date, applicants are submitting this Reply, which is fully responsive to the Office Action of August 13, 2003. The majority of the remarks contained herein are being submitted for the third time and respond to objections and rejections of the February 6, 2003 Office Action. However, applicants have also addressed any new matters raised by the Examiner in the Office Action of August 13, 2003.

Claims 25-147 are pending in this application. Applicants have amended claims 26, 44, 45, 76, 87, 92, and 144-146 to more particularly define the invention. Applicants respectfully submit that the amendments are fully supported and add no new matter.

Reconsideration of this application in light of the following remarks is hereby respectfully requested.

II. Summary of the Examiner's Action

Claims 25, 27-43, and 95-143 were withdrawn from consideration as being directed to a non-elected invention.

The Examiner stated that he "did not find clear support of the subject matter from the original

disclosure" for newly filed claims 144-147. The Examiner requested that applicants "point out where there is original support for these claims."

The Examiner maintained that the Information Disclosure Statement filed May 30, 2003 did not include copies of all of the documents cited therein or a Form PTO-1449 or equivalent.

Claims 46-52, 65-75, and 78-79 were objected to for having the same scope.

Claims 26, 44-94, and 145-146 were rejected under 35 U.S.C. § 112 as being indefinite.

Claims 26, 44-58, 63-94, and 144-147 were rejected under 35 U.S.C. § 102(b) as being anticipated by Marin et al. U.S. Patent No. 5,397,555 (hereinafter "Marin").

Claims 59-62 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Marin in view of Frantzen et al. U.S. Patent No. 5,843,164 (hereinafter "Frantzen").

The Examiner requested that applicants provide a list of all copending applications that set forth similar subject matter to the present claims. The Examiner further requested that a copy of such copending claims be provided in the response to this Office Action.

III. Applicants' Reply to the Examiner's
Request Regarding Claims 144-147

The Examiner stated that he "did not find clear support of the subject matter from the original disclosure" for newly filed claims 144-147 and requested that applicants "point out where there is original support for these claims."

In response to the Examiner's request, applicants submit that the anastomotic connectors defined in claims 144-147 are supported, for example, by FIG. 34a, which is described in the specification at page 36, lines 5-28. Clip segments are illustratively shown by plurality of struts 436, and the twistable resilient segments can be seen in serpentine ring 448, for example. Additional support for claims 144-147 can be found in the specification at page 26, line 30 thru page 27, line 5 and page 19, lines 17-22 and 29-31.

IV. Applicants' Reply Regarding the
Information Disclosure Statement

The Examiner contends that the Information Disclosure Statement filed May 30, 2003 failed to provide copies of all of the cited documents or a Form PTO-1449 or equivalent.

Applicants respectfully submit that copies of all of the references cited in the Information Disclosure Statement and the Form PTO-1449 were submitted with the Information Disclosure Statement filed on May 30, 2003

and resubmitted on August 29, 2003. Attached as Exhibits A and B are copies of the return postcards, stamped by the PTO, for the filings on May 30, 2003 and August 29, 2003, which list, among the submitted items, "Copies of Fifty Seven (57) Cited References" and a "Form PTO-1449."

Applicants enclose herewith two additional copies of the Form PTO-1449. Applicants respectfully request that the Examiner consider the cited documents that were submitted on both May 30, 2003 and August 29, 2003, and that consideration be indicated by signing and initialing the resubmitted Form PTO-1449. Should copies of any cited references still be missing from the PTO's file, applicants respectfully request that the Examiner promptly contact the undersigned agent to obtain replacement copies.

V. Applicants' Reply to the Objection to
Claims 46-52, 65-75, and 78-79

The Examiner objected to claims 46-52, 65-75, and 78-79 as having the same scope. Specifically, the Examiner contended that each of claims 46-52 has the same scope, each of claims 65-68 has the same scope, each of claims 69-72 has the same scope, each of claims 73-75 has the same scope, and each of claims 78-79 has the same scope. Applicants concede that each of four of the groups of claims (i.e., claims 46-52, 65-68, 69-72,

and 73-75), contain claims that are identical. However, applicants respectfully submit that claims 78 and 79 are not identical and do not have the same scope.

Claims 46-52 and 65-75 were copied from an application of another. They were added in a Supplemental Amendment And Notification Pursuant To 37 C.F.R. § 1.604(b) Identifying Published Patent Applications From Which Claims Have Been Copied ("Notification"), filed February 26, 2002. In that Notification, applicants noted that language was being omitted from the claims that did not refer to patentably distinct features. These omissions resulted in the presentation of the groups of identical claims identified by the Examiner. Applicants acknowledge the requirement to cancel all but one of the duplicate claims from each of the groups of identical claims if they are allowed. However, applicants respectfully resubmit that all of the copied claims are fully supported by the original specification and drawings of this application.

Regarding claims 78 and 79, applicants respectfully submit that the claims do not have the same scope. Claim 78 refers to a connector wherein "spikes engage the same blood vessel" (emphasis added) and claim 79 refers to a connector wherein "spikes engage different blood vessels" (emphasis added). Accordingly, these claims do not have the same scope. Applicants

respectfully request that the objection to claims 78 and 79 be withdrawn.

VI. Applicants' Reply to the Rejection of
Claims 26, 44-94, and 145-146 under 35 U.S.C. § 112

The Examiner rejected claims 26, 44-94, and 145-146 under 35 U.S.C. § 112 as being indefinite. The Examiner's rejections are respectfully traversed.

The Examiner asserts that the use of the phrase "cylinder-like" in claims 26 and 44-94 renders the claims indefinite because "the claim(s) include(s) elements not actually disclosed." Applicants respectfully submit that the phrase "cylinder-like" has clear meaning from the specification and is not indefinite.

Applicants' anastomotic connector is described in the specification as "an annular collar structure or ring 520b disposed concentrically around balloon 512b" (page 22, lines 9-11). Additionally, FIG. 17 shows a "cylinder-like" connector. Therefore, the meaning of "cylinder-like" would be clear to one of ordinary skill in the art, and the scope of the claims is readily ascertainable.

Accordingly, applicants' claims 26 and 44-94 are not indefinite. Applicants acknowledge the Examiner's interpretation of "cylinder-like" as "cylinder," though they find it unnecessary, and

respectfully request that the rejection of claims 26 and 44-94 be withdrawn.

With regard to claim 145, the Examiner asserted that "said segments" is indefinite "based upon the base claim because two segments were previously set forth therein." The Examiner also asserted that "said attachment segment" in claim 146 is indefinite because it lacks antecedent basis from independent claim 144. Applicants have amended claims 145 and 146 to establish proper antecedent basis and respectfully request that the rejections of these claims be withdrawn.

VII. Applicants' Reply to the Rejection of
Claims 26, 44-58, 63-94, and 144-147
under 35 U.S.C. § 102(b)

The Examiner rejected claims 26, 44-58, 63-94, and 144-147 under 35 U.S.C. § 102(b) as being anticipated by Marin. Specifically, the Examiner contended that barbs 18 and ribs 14 meet the claim language. The Examiner's rejections are respectfully traversed.

Applicants have amended independent claims 26, 44, 45, 76, 87, 92, and 144 to more clearly define the invention. Applicants' invention as defined by independent claims 26, 44, 45, 76, 87, 92, and 144 is directed toward a connector used to form a fluid-tight anastomotic connection between two blood vessels via the sidewall of one of the blood vessels. According to applicants' preferred embodiment, anastomotic connectors

are used to secure a tubular bypass graft between a blood source, such as the aorta, and an occluded coronary artery. In this example, the anastomotic connectors create fluid tight connections between the blood source and the graft and between the graft and the coronary artery.

Marin shows an intraluminal stent used to anchor an endoluminal graft coaxially within a diseased blood vessel. As stated by the Examiner, Marin shows barbs 18 that twist about ribs 14 to engage tissue. However, applicants respectfully submit that Marin does not show each and every feature of applicants' independent claims 26, 44, 45, 76, 87, 92, and 144. Specifically, Marin fails to show the ability to form a fluid-tight anastomotic connection between a blood vessel and an opening in the sidewall of another blood vessel. *Anastomosis* is defined as "the union of parts or branches (as of streams, blood vessels, or leaf veins) so as to intercommunicate." Merriam-Webster's Collegiate Dictionary 42 (10th ed. 2001). Applicants illustrate an exemplary fluid-tight anastomotic connection in FIG. 34, in which conduit 430 is anastomosed to aorta 30 with struts 1436 via aorta wall 34. The stent shown in Marin has barbs that are designed to "engage the graft and the surface of the blood vessel to mechanically attach the stent to the vessel" (column 1, lines 60-62), but the

stent is not capable of forming a fluid-tight anastomotic connection between a blood vessel and an opening in the sidewall of another blood vessel as claimed by applicants. A stent is a "short narrow metal or plastic tube that is inserted into the lumen of an anatomical vessel (as an artery or a bile duct) especially to keep a formerly blocked passageway open" Merriam-Webster's Collegiate Dictionary 1148 (10th ed. 2001) (emphasis added). Marin merely shows a stent that might be used to coaxially install a graft in a diseased blood vessel. Marin neither shows nor suggests, expressly or inherently, using an anastomotic connector to make a fluid-tight connection between a blood vessel and an opening in the sidewall of another blood vessel. It is not clear how Marin's stent could create a fluid tight seal as claimed by applicants.

Because Marin fails to show, expressly or inherently, each and every feature of applicants claimed invention as defined by independent claims 26, 44, 45, 76, 87, 92, and 144, the rejection of independent claims 26, 44, 45, 76, 87, 92, and 144 should be withdrawn. Furthermore, since claims 46-58, 63-75, 77-86, 88-91, 93-94, and 145-147 depend from independent claims 26, 44, 45, 76, 87, 92, and 144, the rejection of claims 46-58, 63-75, 77-86, 88-91, 93-94, and 145-147 should also be withdrawn. Therefore, applicants respectfully request

that the rejection of claims 26, 44-58, 63-94, and 144-147 be withdrawn.

VIII. Applicants' Reply to the Rejection of
Claims 59-62 under 35 U.S.C. § 103(a)

The Examiner rejected claims 59-62 under 35 U.S.C. 103(a) as being unpatentable over Marin in view of Frantzen. Specifically the Examiner contended that Marin meets the language of claims 59-62, except for the super-elastic temperature-triggered shape-memory material which is shown in Frantzen. Because claims 59-62 depend from allowable independent claims 44 and/or 45, claims 59-62 are allowable. Independent claims 44 and 45 were not included in the Examiner's 35 U.S.C. § 103(a) rejection. Therefore, applicants respectfully request that the rejection of claims 59-62 be withdrawn.

IX. The Examiner's Request Regarding
Coping Applications

The Examiner requested that applicants provide a list of all copending applications and claims that set forth similar subject matter to the present claims. Applicants respectfully submit that this request has been met twice previously by applicants. Attached as Exhibits A and B are copies of the return postcards, stamped by the PTO for the May 30, 2003 and August 29, 2003 filings, which list, among the submitted items, the "Reply to Final Office Action" which includes Appendix B, "Copy Of

The Claims For Copending Applications That Could Arguably Be Said To Set Forth Similar Subject Matter To The Present Claims." If neither copy of Appendix B has been located, applicants respectfully request that the Examiner promptly contact the undersigned agent for a replacement copy.

X. Conclusion

For at least the foregoing reasons, applicants respectfully submit that claims 26, 44-94, and 144-147 are allowable. Therefore, this application is in condition for allowance.

Accordingly, prompt reconsideration and allowance of this application are respectfully requested.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Stuart W. Yothers", is written over a horizontal line.

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